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Supreme Court, U.S.
FILED
OCT 23 2006
OFFICE OF THE CLERK

Docket No. 06-76

UNITED STATES SUPREME COURT

In re Jessie D. McDonald,
Petitioner

PETITION TO REHEAR

For the Petitioner:
Dr. Jessie D. McDonald, Ed. D.
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Nashville, Tennessee
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May it please the Court:

Pursuant to Rule 44 of the Rules of the Supreme Court of the United States, the Petitioner Jessie D. McDonald, pro se respectfully request this court to reconsider its original decision entered on October 2, 2006, where the respondents exceeded the jurisdiction conferred and failed to perform a ministerial duty of their respective offices by denying me of access to state and federal district court pursuant to Rule 60.02 of Tennessee Rules on Civil Procedure [TRCP, hereinafter] and the one year statute of limitation to apply for relief in the federal district court from a void judgment.

Grounds for Rehearing

(1) Rule 60.02, of TRCP is unconstitutional and conflicts with due process under the Fifth Amendment to the United States Constitution by allowing a void judgment to stand, when the petitioner was denied the right to be informed by indictment for the crime the conviction is based on;

(2) Rule 60.02, TRCP is unconstitutional and creates a conflict with due process, when the direct appeal clearly showed the petitioner was never informed by indictment of the nature of the crime the conviction was based on as required by the Fifth Amendment to the U.S. Constitution and resulted in a miscarriage of justice and caused the petitioner to be prejudiced by having to serve a three (3) year prison sentence;

(3) Rule 60.02, TRCP and the federal one year statute of limitation are unconstitutional and has created a conflict with due process, as previously decided by the United States Court of Appeals for the Sixth Circuit, on the exact same subject matter, in case, *Fred Harry Rogers v. Carol Howes,* No. 96-1862, Electronic Citation No. 1998 Fed. App. 0162p (6th.Cir.), File Name: 98a0162p.06, when the court held, in the interest of justice, to prevent a miscarriage of justice, relief can be sought at anytime, even after thirty (30) years.

(4) Rule 60.02, TRCP is unconstitutional when applied on a retroactive basis and the said rule was not in place as a rule in January of 1973, when the conviction was rendered by the trial court.

Certification of Good Faith

I, Jessie D. McDonald, being the petitioner in this case, states that this petition to rehear is being presented in good faith and not for delay; and this application is limited to the grounds as stated above, since the original application was considered pursuant to Rule 14.4 of this Court Rules.

I further state that this application is restricted to the grounds that are being presented in this application.

/s/Dr. Jessie D. McDonald, Ed.D.